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10/542,257

12/08/2005

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EXAMINER

WHITE, DENNIS MICHAEL

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

11/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/542,257 | Applicant(s) KERROD ET AL. | |
| | Examiner DENNIS M. WHITE | Art Unit 1797 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/19/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, **as a section heading**. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claims 2 and 4 recites the limitation "the catch" in line 2 of claim 2 and "said shield element" in line 1 of claim 4. There is insufficient antecedent basis for this limitation in the claim. Claims 3, 5-6 are rejected because of their dependency and failure to remove the ambiguity of the parent claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Kelley et al (USP 5,679,154).

7. Regarding claim 1, Kelley teaches a cytology centrifuge apparatus comprising a combined sample chamber portion 422 including a tube 430 ("structure on one side of the base defining a chamber for a fluid sample") for introducing the sample ("after placing, in the sample chamber, a fluid biological

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sample containing cells”) through a sample entrance aperture 434 (“with an opening for the introduction of fluid to said chamber”), a rear surface 438 (“integrally moulded body affording a base adapted for engagement with a microscope slide”) and backing plate 424 (“slide holder”) adapted to be mounted with a microscope slide 300 in a centrifuge 10 in a predetermined position. The sample chamber portion 422 (“base”) including a sample exit aperture 436 and carrying an annular ring (“a means for sealing the edges of such aperture with respect to the surface of a microscope slide placed across the base”); the backing plate 424 is connected with the sample chamber portion 422 (“base plate”) by a living hinge (“integral hinge”) and a lip 460 and detent 466 mechanism (“a latch mechanism formed integrally with the remainder of the device”) and arranged, when the back plate is closed against the rear of a microscope slide engaged with the base, to locate the slide between the base and the cover plate and to hold the cover plate in this closed position until removal (“fracture” is sufficiently broad to read on any element that is removed) of a fastener 350 (“retaining element”) from the integrally moulded body.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley et al (USP 5,679,154).

Regarding claim 7, Kelley teaches a cytology centrifuge apparatus comprising a combined sample chamber portion 422 including a tube 430 ("structure on one side of the base defining a chamber for a fluid sample") for introducing the sample ("after placing, in the sample chamber, a fluid biological sample containing cells") through a sample entrance aperture 434 ("with an

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opening for the introduction of fluid to said chamber”), a rear surface 438 (“integrally moulded body affording a base adapted for engagement with a microscope slide”) and backing plate 424 (“slide holder”) adapted to be mounted with a microscope slide 300 in a centrifuge 10 in a predetermined position. The sample chamber portion 422 (“base”) including a sample exit aperture 436 and carrying an annular ring (“a means for sealing the edges of such aperture with respect to the surface of a microscope slide placed across the base”); the backing plate 424 is connected with the sample chamber portion 422 (“base plate”) by a living hinge (“integral hinge”) and a lip 460 and detent 466 mechanism (“a latch mechanism formed integrally with the remainder of the device”) and arranged, when the back plate is closed against the rear of a microscope slide engaged with the base, to locate the slide between the base and the cover plate and to hold the cover plate in this closed position until removal (“fracture” is sufficiently broad to read on any element that is removed) of a fastener 350 (“retaining element”) from the integrally moulded body. Kelley discloses the embodiment without the living hinge comprising a seal 134 comprising an elastomeric material. Kelly teaches elastomeric material is desirable to form a seal between the two plates. Kelley is silent to the composition of the annular ring. It is well known, as taught by Kelly, to use an elastomeric material to form a seal between two plates. It would have been within the skill in the art to further modify Kelly and use a well known sealing material, such as an elastomeric material, to construct the annular ring to gain the well known advantages of creating a seal.

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Regarding claim 8, Kelley et al teach the elastomer, body, and back plate. It is noted that this claim contains product-by-process language. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process, consult *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In this case the product (for example, sorbent) of Elias (the reference) is seems similar to those instantly claimed. Therefore, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product, consult *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983).

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley et al (USP 5,679,154) in view of Lindlof (USP 3,676,387).

Kelley et al teach the limitations of claims 7-8 as per above.

Regarding claim 9, Kelley et al teach the annular ring comprising an elastomeric material. Kelley is silent about the material of said gasket includes an oil component.

Lindlof et al teach stable elastomeric polymer-oil comprising nonaromatic paraffinic oils and elastomeric block copolymers for rubbers (col. 1 lines 66-72). Lindlof teaches these polymer-oil combinations provide great energy dissipation and cushioning effects (col. 1 lines 30-40).

Therefore it would have been obvious to one of ordinary skill in the art to substitute the elastomeric material of Kelley et al for the elastomeric polymer-oil

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material of Lindlof in order to provide the interaction between the microscope slide and the device a superior cushioning effect during centrifugation.

The material of Kelley/Lindlof is fully capable of forming an oil film on the microscope slide where the gasket contacts the slide, which soon act as a barrier to aqueous fluid and thus tends to prevent migration of such fluid past the region of the slides contacted by the gasket, after opening of the centrifugation device and removal of the slide (Lindlof: col. 1 lines 35-38).

Allowable Subject Matter

13. Claims 2-6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: No other prior art that anticipates or suggests fairly a centrifugation device comprising a shield element that is held from movement by a frangible retaining element and when the frangible retaining element is broken or fractured the shield element is allowed to move away from a complementary latch engaged with a back plate detent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DENNIS M. WHITE whose telephone number is (571)270-3747. The examiner can normally be reached on Monday-Thursday, EST 8:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lyle A Alexander/
Primary Examiner, Art Unit 1797

/dmw/